

No. 578, dated 21st June, 1974

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated the 13th June, 1974.

O. P. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 5992-4L-74/23355.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad, in respect of the dispute between the workmen and the management of M/s. Pearl Cycle Industries Ltd., Ballabgarh.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 46 of 1972

between

THE WORKMEN AND THE MANAGEMENT OF M/S PEARL CYCLE INDUSTRIES, LTD.,
PALI ROAD, BALLABGARH.

Present :—

Shri Sunhari Lal, for the workmen,

Shri D. C. Bhardwaj, for the management.

AWARD

The workmen of M/s. Pearl Cycle Industries, Ltd., Pali Road, Ballabgarh had raised certain demands regarding the fixation of grades and scales of pay, payment of dearness allowance, bonus, etc. which were referred for adjudication to this Tribunal by order No. ID/FD/72/28978, dated 28th July, 1972 of the Governor of Haryana, in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 with the following terms of reference.

1. Whether the management should pay bonus to the workmen for the year 1971? If so, with what details?
2. Whether the management should be required to fix the grades and scales of pay of the workmen? If so, with what details?
3. Whether the management should grant dearness allowance to the workmen? If so, with what details?

Usual notices were given to the parties. The management has contested the demand of the workmen on the main ground that the factory had since been lying closed from June, 1973 and there has been no worker on roll. Shri D. C. Bhardwaj authorised representative of the management has made a statement on oath to the above effect. This plea of the management has not been disputed on behalf of the workmen as would be clear from the statement of the authorised representative of Shri Sunhari Lal who does not want to press the demands of the workmen subject, however, to his right to raise a fresh dispute with regard to these demands, if and when deemed necessary.

In view of above, no further proceedings are called for in the case and a no dispute award is given. In the circumstances there shall be no order as to costs.

Dated the 14th June, 1974.

O. P. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 580, dated 21st June, 1974

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated the 14th June, 1974.

No. 5988-4L-74/23357.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad in respect of the dispute between the workmen and the management of M/s Avon Services (P) Ltd., Ballabgarh.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Application No. 18 of 1972 under section 33-A of the Industrial Disputes Act, 1947

between

The workmen and the management of M/s Avon Services (P) Ltd., Ballabgarh.

Present :—

Shri Onkar Parshad, for the workmen.

Shri H. R. Dua, for the management.

AWARD

The workmen of M/s Avon Services (P) Ltd., Ballabgarh raised certain demands regarding supply of Milk, Gur, etc. which were referred for adjudication to this Tribunal and registered as reference No. of 16 1972. During the pendency of this reference the management laid off 27 out of 51 workmen in the factory by order dated 8th August, 1972. Feeling aggrieved, they brought the present complaint under section 33-A of the Industrial Disputes Act, 1947 on 20th September, 1972 with the allegations that since they were workmen concerned in the aforesaid reference the impugned action of the management regarding their lay off contravened the provisions of section 33 of the Industrial Disputes Act, and as such the order being illegal and unenforceable against them, they were entitled to reinstatement and payment of their wages.

Notice of the complaint was given to the management. The allegation made by the workmen have been controverted and the maintainability of the complaint in the present form has been questioned. It has further been contended that the lay off has been brought about in accordance with the law and the workmen were estopped from challenging its validity by their own conduct in accepting the lay off compensation which had been paid more than what was due to them. There being thus no alteration brought about in the service conditions, of the workmen, their complaint was frivolous and they were not entitled to any relief.

The following issues arose for determination in the case from the above pleadings of the parties :—

1. Whether the complaint in the present form is not maintainable? (on respondent)
2. Whether there has been a violation of the provisions of section 33 of the Industrial Disputes Act, 1947 as alleged by the complainants? (on complainant)
3. If issue No. 1 is not proved and issue No. 2 is proved whether the lay off of the complainant was justified and in order?
4. Relief.

Out of the workmen concerned only two have come into the witness box, namely, Sarvshri Prem Raj and R. C. Rahi. They have also brought on record certain documents including the orders regarding lay off Ex. W-1, W-2, W-3, W-4, a copy of the agreement dated 30th July, 1972 Ex. W-5. The said agreement relates to the closing of the Drum and Making Paint and further provides that there would be no abstacle or hinderance in the production, despatches or any work in the factory from the side of the workers as well as from the management and the Works Committee would be formed for the settlement of the differences if any; and to improve the production.

On the other hand, the management has examined its partner Shri C. M. Yadav and placed reliance upon documents including copy of the complaint, dated 30th July, 1972 made to the SHO Ballabgarh Ex. M.W. 1/1, copy of the agreement dated 30th July, 1972 Ex. M.W. 1/2 copy of the Complaint filed in the court of Sub-Judge, Ballabgarh Ex. M.W. 1/3, copy of the order of the Court, dated 8th December, 1972 Ex. M.W. 1/4, copy of the summons issued by the Court Ex. M.W. 1/5, copy of the statement of cash credit account Ex. M.W. 1/6, letter, dated 26th June, 1972 from Allen Richard & Co., Defence Colony Delhi, Ex. M.W. 1/7, copy of the retrenchment notice issued to the workmen as well as the authorities concerned of the Labour Department Ex. M.W. 1/8 to Ex. M.W. 1/14, copy of the demand notice, dated 10th August, 1972, Ex. M.W. 1/15, copy of the letter dated 27th November, 1972 from the Secretary to Government, Haryana, Labour and Employment Department Chandigarh Ex. M.W. 1/16, copy of the retrenchment notice dated 30th November, 1972, Ex. M.W. 1/17, statement showing dues paid to the retrenched workers Ex. M.W. 1/18, vouchers payment Ex. M.W. 1/19, to Ex. M.W. 1/22 copy of the registration order under the Bengal Finances (Sales Tax Act) 1941 Ex. M.W. 1/23.

The case has been well argued on both sides and I have given a considered thought to the evidence on record.

As already stated, this complaint has arisen out of the lay-off of the workmen concerned brought about by the management admittedly during the pendency of a dispute—*vide* reference No. 16 of 1972 in which the present claimants were workmen concerned. The main question that arises for determination in the case is whether by the said action the management has contravened the provisions of section 33 of the Industrial Disputes Act by altering the conditions of service of the workmen concerned. The case for the management is that, as a matter of fact on account of the non receipt of orders for the supply of the goods manufactured production had to be stopped which made it necessary to lay off the workmen concerned. The learned representative of the management has argued that this was no sufficient and good ground to justify the lay off in question. I am afraid the contention is devoid of force. Under the law as it now stands there may exist circumstances on account of which the employer may be unable to give work to the workmen and the definition of lay off as given in section 2 (kkk) is clear on this point. The inability on the part of the employer to give work to the workmen may be due to (i) shortage of coal, power or raw-material, or accumulation of stocks or break down of machinery, (ii) any other reasons.

In the instant case the plea raised on behalf of the management is that for want of requisite orders for the supply of goods the stocks had accumulated and the production had, therefore, to be stopped with the result that out of 51 workmen in the factory 27 i.e. the present claimants had to be laid off. It has further come in evidence that the position since did not improve the workmen had subsequently to be brought under retrenchment. In the circumstances, the action of the management in laying off the present claimant cannot be held to be unjustified and not in order. It will not be out of place to mention here that they had raised a dispute to challenge the validity of the lay off but the State Government did not consider it proper to refer their dispute for adjudication under section 10 of the Industrial Disputes Act, 1947. In other words the lay off of the workmen brought about by the management was considered to be justified. Reference may here usefully be made to the demand notice given by the workmen Ex. M.W.1/15 and the copy of the order dated 27th November, 1972 of the Government Ex. M.W.1/16.

The management has further brought on record documentary evidence to establish that retrenchment notices were given to the workmen concerned and also to the authorities of the Labour Department. It has further come in evidence that retrenchment compensation had been paid in full to the workmen and they had raised no protest in this behalf.

So taking into consideration all the facts and the circumstances of the case discussed above, which stand established by oral as well as documentary evidence, I am satisfied that the management had not brought about any change or alteration in the conditions of service of the workmen concerned nor had any provisions of section 33 of the Industrial Disputes Act had been contravened so as to validate the present complaint under section 33-A of the Act. The lay off of the workmen had to be resorted to under circumstances beyond the control of the management on account of the accumulation of stocks for want of orders for the supply of the same and when the position did not improve after waiting for some time the workmen had even to be brought under retrenchment. They had challenged the action of the management by raising a regular dispute but the State Government has not considered it fit to make a reference under section 10 of the Act and their demand in this behalf has been rejected.

The issues involved in the case are, therefore, decided against the workmen (complainants) and in favour of the management. The complaint, shall, come in the result, stand dismissed as being not competent. There shall, however, be no order as to costs.

Dated 11th June, 1974.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 576, dated the 21st June, 1974.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated the 17th June, 1974.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 11th July, 1974

No. 5997-4L-74/23215.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad in respect of the dispute between the workman and the management of M/s Havells Electricals (Sales) Corporation, Faridabad.

BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 45 of 1970

between

SHRI SOHAN SINGH, WORKMAN AND THE MANAGEMENT OF M/S HAVELLS
ELECTRICALS (SALES) CORPORATION, FARIDABAD

Present.—Shri Sagar Ram Gupta, for the workman.

Shri Sudhir Chaddha, for the management.

AWARD

Shri Sohan Singh concerned workman had been in the service of M/s Havells Electricals (Sales) Corporation, Faridabad as a Supervisor in the Glazing and Finishing Section of the Porcelain Department since 21st January, 1961. He was placed under suspension on 25th July, 1969 allegedly on a charge of misconduct in the performance of his duty and after holding inquiry he was dismissed from service with effect from 1st October, 1969. He challenged the correctness of the charge levelled against him, the validity of the inquiry as well as the dismissal order and approached the management for his reinstatement to which the management did not agree. This gave rise to an industrial dispute. He served the management with demand notice dated 9th October, 1969 whereupon conciliation proceedings were initiated which, however, ended in failure.

On receipt of the failure report from the Conciliation Officer, the Governor of Haryana, referred the dispute for adjudication to this Tribunal, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947.—vide order No. ID/7D/236 G/7080, dated 10th March, 1970 with the following term of reference:—

Whether the termination of Shri Sohan Singh was justified and in order? If not, to what relief is he entitled?

The parties were called upon to put in their respective pleadings. The workman reiterated his demand for reinstatement and payment of back dues as earlier raised through the demand notice leading to the present reference. The management, on the other hand, contested his claim on the ground that he had been charged with negligence and carelessness in the performance of his duty due to bad Glazing and Finishing of Porcelain good and his explanation to the charge-sheet being not satisfactory an inquiry into his conduct was held in which the said charge was established and hence the impugned order of his dismissal from service.

From the pleadings of the parties the issue that arose for determination in the case was precisely the same as per the term of reference stated above.

The management has relied upon the inquiry proceedings the records, whereof have been produced and one witness Shri A.D. Seth, Ex-Manager of the concern has been examined as a witness in the case. Mr. Seth had deposed that on account of non-availability of the suitable raw material, shortage of power and labour trouble, the factory was closed in March, 1971 and it has not been restarted. He has further stated that he had not been in the service of this factory earlier and the only duty assigned to him was with regard to the closure of the business for which he had put in service for 3/4 months. He has not said a word about the present workman or his dismissal from service.

Shri Sohan Singh has himself come into the witness-box and made a detailed statement. According to him, he had all along been discharging his duty faithfully. He had nothing to do with the preparation of the Glazing material which was received from another department in his section and after using the same the glazed material was sent over to the Oven Department. The glaze left over was tested by the management and it was found to be in order.

With regard to the alleged domestic inquiry his contention is that no time was allowed to him to prepare his case before the start of the inquiry nor was the inquiry record correctly prepared. He has further stated that the documents now produced by the management relating to his past record of service were never produced during the course of the inquiry and he had no notice of the same. He has further stated that, as a matter of fact, the inquiry was held against one Shri Khichu Ram, who was also dismissed by the management, and against one Shri Jagdish who had tendered apology and was taken back on duty. Even the inquiry officer had told him that the inquiry was, in fact, against Shri Khichu Ram. He has admitted in cross-examination that he had signed the inquiry proceedings as well as the documents Exhibits M-2, M-3, M-4, M-5, M-6, M-7, M-8, and the fact that he had been gainfully employed in the P.W.D., B. & R. Branch, Faridabad at Rs 171 per mensem since January, 1971 while he was getting Rs 200 at the time of his dismissal from service in the present concern. The documentary evidence relied upon by him consists of Exhibit W-1, a true copy of the Certified Standing Order of the Company and Exhibit W-2 a copy of the application dated 10th August, 1969, that no proper opportunity had been given to him to defend his case and the inquiry was not being properly held.

The case has been well argued on both sides and I have given a careful consideration to the facts on record. It is common ground between the parties that the factory had since been closed from March, 1971 and it has not been restarted. The question of the reinstatement of Shri Sohan Singh in the factory, therefore, does not arise for the simple and obvious reason that the business having been closed on account of non-availability of suitable material, shortage of power and some labour trouble as alleged by the management, the business is totally at a stand-still and there being no work going in the factory. There is naturally no job against which he could be reinstated or re-employed. Moreover, according to his own statement he has been gainfully employed in the P.W.D., B. & R. Branch at Faridabad since January, 1971.

However, the important question that arises for consideration in the case is whether the impugned order of his dismissal from service was justified or not. The burden was on the management to establish that he had really been guilty of any misconduct as defined under the Certified Standing Orders of the Company Exhibit W-1, on record and a just and proper inquiry had been held to establish that charge against him. After a very close scrutiny of the evidence produced by the management I am constrained to observe that the burden has not been successfully discharged. In the first instance, no inquiry officer or any other official connected with the inquiry has come into the witness-box to make a statement on oath and stand the test of cross-examination by the workman. Some inquiry record has no doubt been produced but it has not been proved in the legal manner by examining the concerned witness or witnesses. The only witness examined in the case Shri A.D. Seth, Ex-Manager has not said a word about the alleged misconduct of the workman or about the enquiry said to have been held against him.

As already pointed out, he was working as a Supervisor in the Glazing and Finishing Section of the Porcelain Department. The management had levelled two charges against him, firstly that on 24th July, 1969, while unloading the Porcelain items from the furnace mentioned in the charge-sheet were found to be defective and unserviceable and he being the supervisor was guilty of gross negligence and carelessness in the performance of his duty and, secondly, that his past record was also not good and he had been charge-sheeted and given warnings several times as already pointed out, he denied the above allegations made against him. No evidence has been brought on record to show that the manufacturing of the glazing material was done under his supervision. According to him the glazing material was received from another department and after applying the same the items were sent to the Oven Department and the glaze left over was tested by the management and found to be in order. This statement of his has remained unchallenged and no evidence has been produced by the management to the contrary, as already observed, to establish this charge. With regard to the second charge relating to his previous conduct also he was not given any adequate opportunity to defend himself. The alleged previous charge-sheets, warnings etc., were not even produced before the Inquiry Officer.

So, taking into consideration all the facts and the circumstances of the cases discussed above, I am of the considered view that no proper inquiry had been conducted against this workman to establish the alleged charges of misconduct in the performance of his duty. In the circumstances the inquiry has to be held to be vitiated and the impugned order of his dismissal from service which followed to be not justified. The learned representative of the management has not been able to satisfy me to the contrary.

For the reasons aforesaid, the issue is decided against the management and in favour of the workman and it is held that his dismissal from service is not justified and is in order.

The question that next arises for consideration in the case is as to what relief the present workman is entitled to as a result of my above finding that the impugned order of his dismissal from service was not valid. The factory being since admittedly closed the question of his reinstatement or re-employment does not arise as already discussed. He is also gainfully employed from January, 1971, onwards in the P.W.D., B. & R. Branch, Faridabad. There is, however, no evidence on record to show that he had been employed anywhere during the intervening period from the date of his dismissal from service, i.e., 1st October, 1969 to the date of his appointment in the said Department in January, 1971, and that being so, he is certainly entitled to his wages for this period at the same rate he was getting when he was dismissed from service. The award is made accordingly but there would be no order as to costs.

Dated 17th June, 1974.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 585, dated 21st June, 1974.

Forwarded (four copies) to the Secretary to Government, Haryana Labour and Employment Department Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

Dated 17th June, 1974.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.
S. N. BHANOT.

Commissioner for Labour and Employment & Secy.